

# BOARD OF ADJUSTMENT REPORT



MEETING DATE: 2/2/2005

ITEM No. 3

ACTION REQUESTED: Zoning Ordinance Variance

SUBJECT Marshall Deluca Residence  
14-BA-2004

**This case was continued by the Board of Adjustment at the December 8, 2004 hearing.**

REQUEST Request to approve a variance from Article V. Section 5.204 E.1 regarding front yard setback requirements, on a parcel located at 8020 E Sharon Drive with Single Family Residential (R1-35) zoning.

OWNER Amy Marshall & John Deluca  
602-399-2800

APPLICANT CONTACT Amy Marshall & John Deluca  
602-399-2800

LOCATION 8020 E Sharon Drive, southwest  
corner of Thunderbird Rd. and  
81<sup>st</sup> Street



CODE ENFORCEMENT  
ACTIVITY Not Applicable

PUBLIC COMMENT No public comment has been received by staff on this case. The applicant has contacted adjacent properties within 300 feet of the site and has received no adverse comments.

ZONE R1-35 (Single Family Residential) District.

FEBRUARY 2, 2005  
UPDATE The case was continued at the December 8, 2004 Board of Adjustment meeting subject to the **request to obtain the following additional information:**

- 1). Investigate the circumstances related to the other homes referred to by Mr. Deluca that did not meet the 40-foot setback requirements.
- 2). Investigate what had occurred with the widening of the drainage easement and the wash along the east side of the site and if a possible solution to this situation should be considered.
- 3). Further clarification of whether the City has a preference for an entrance to the property from either Eighty-first St. (81<sup>st</sup>) or Sharon Drive.

**Responses:**

1). Research indicates that there have been 15 BOA cases in the Desert Wind Community, 13 of which occurred in 1979-80, and one each occurring in 1985 and 1988. Seven (7) of these Cases occurred along Sharon Drive, one being on the neighbors lot to the west and one being at the subject site. Both of the cases on the lots along 81<sup>st</sup> Street had to do with wall location. The western lot also dealt with the consideration of the front yard to be along Sharon Drive rather than 81<sup>st</sup> Street even though, 81<sup>st</sup> Street had the narrower frontage.

2). The Drainage Easement through the area was a requirement of the original Desert Wind plat approved in 1978 and construction was a requirement of the developer, with maintenance stipulated to be the responsibility of the individual property owners on which the easement was located. The 30 ft. wide drainage easement was located centrally on the property lines in this case with 15 ft. provided on each side of the property lines including 15 ft. located on the subject property. The City maintains the drainage easements but only removes brush, not dirt. Preliminary measurement of the width of the drainage easement on this property is 23+/- ft. At the lot owner's discretion, a certified civil engineer may be engaged to prepare a drainage report for the site and when acceptable to the City, may provide for modifications to the canal for the possible reclaiming and refilling of unnecessary excavated areas that extend beyond the 15 ft. wide drainage easement. However, the canal is an existing condition.

3). The City recognizes existing driveway locations on the site that access both 81<sup>st</sup> Street and Sharon Drive. Sharon Drive is considered to be the frontage that is most commonly used by the other lots located toward the east and west. Although both or either driveways appear to be safe, if only 1 of the driveways was to be considered, Staff prefers that the site access be to Sharon Drive, which generally conforms to other driveways located along the street.

DEVELOPMENT  
CONTEXT

The site contains a single-family residence located in the Desert Wind, R1-35 residential subdivision. The property has streets adjacent to 3 sides of the lot, with Thunderbird Road located to the north, 81<sup>st</sup> Street to the west and Sharon Drive to the south. Due to the location of the streets, a 40 ft. building setback requirement applies to each side of the lot adjacent to the streets, which the appellant indicates significantly limits the ability to expand his home. The applicant is requesting, a variance of 28 feet, from 40 to 12 ft. in order to build a new, attached 3-car garage along the west side of the residence. An existing 2-car garage located at the southwest side of the house, will be converted for additional interior living space.

The site currently has access to both 81<sup>st</sup> St. and Sharon Drive. With the proposed variance, the applicant is proposing to eliminate access from 81<sup>st</sup> Street and use the Sharon Drive access only. The applicant indicates the existing 6 ft. block wall and landscaping along 81<sup>st</sup> Street will be extended along the property line so views of the new garage will be minimal from 81<sup>st</sup> Street. Finally, the applicant indicates that an existing wash/canal existing along the eastern side of the site

physically constrains the site and limits the ability to develop the new garage or expand the house in any direction except along the western side, as requested in the variance.

ORDINANCE  
REQUIREMENTS

Section 5.204 E.1 of the Ordinance, Front Yards, states, "On a corner lot, the required front yard of forty (40) feet shall be provided on each street."

DISCUSSION

The request to vary the setback requirement for the new garage from the street is a substantial reduction from the required 40-foot setback to the 12-foot setback being proposed. Alternate locations are limited due to the adjacent streets and the wash on the property.

FINDINGS

**1. That there are special circumstances applying to the property referred to in the application, which do not apply to other properties in the District. The special circumstances must relate to the size, shape, topography, location or surroundings of the property at the above address:**

The applicant states the house is adjacent to streets on the north, west and south sides and a wash/canal is situated on the east side. The streets result in increased setbacks and the wash reduces building options on the site, and this is probably the only lot in the subdivision with these conditions.

Staff believes that although these limitations exist, options are available to either meet the Ordinance requirements or to reduce the extent of the variance proposed.

**2. That special circumstances were not created by the owner or applicant:**

The applicant indicates that although he purchased the lot with these pre-existing conditions, the location of the wash and 3 adjacent streets represents a usual condition and hardship on the ability to develop his property.

Staff feels that all of the conditions applicable to this site were apparent on the site since the time it was developed, and every option should be taken to eliminate the need or reduce the amount of the encroachment into the yard setback.

**3. That the authorizing of the variance is necessary for the preservation of the privileges and rights enjoyed by other properties within the same zoning classification and zoning district:**

The applicant indicates that other properties in this area are upgrading and expanding their buildings, while he is specifically constrained by setback conditions of the lot.

Staff notes that improvements are occurring within the

neighborhood however, these have occurred within the requirements of the Ordinance and without the need for variances.

**4. That the authorizing of the application will not be materially detrimental to persons residing or working in the vicinity, to adjacent property, to the neighborhood, or the public welfare in general:**

The applicant states that allowing the variance will allow this property to remodel to the extent and standards of the improvements to homes occurring elsewhere in this neighborhood, will maintain property values, and will not be detrimental to adjacent properties.

Staff supports the principle of residential upgrading and maintaining neighborhood quality and values. Every effort should be made and option considered to develop in accordance with zoning regulations and setback consistent with other properties in the area.

## STAFF CONTACT

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## ATTACHMENTS

1. Project Description
2. Justification
3. Context Aerial
4. Aerial Close-up
5. Zoning Map
6. Photographs
7. Proposed Site Plan
8. Map of Approved BOA Cases Within the Desert Wind Subdivision



# ZONING ORDINANCE VARIANCE

## Application Submittal Requirements

### Project Description / Variance Details

Case Numbers: 616 - PA - 2004 / 14 - BA - 2004

Project Name: Marshall Garage

Location: 8020 E Sharon DR

#### Property Details:

☒ Single-Family Residential ☐ Multi-Family Residential ☐ Commercial ☐ Industrial

Use: RESIDENCE

Zoning: R1-35

Number of Buildings: \_\_\_\_\_

Height: \_\_\_\_\_

Setbacks: N - \_\_\_\_\_ S - \_\_\_\_\_ E - \_\_\_\_\_ W - 12'

#### Description of Request:

Section of the Zoning Ordinance to be varied: S.204 E 1

Project Narrative: THE HOUSE AND 3/4 ACRE LOTS HAS AN UNUSUAL CONFIGURATION CONTAINING TRIPLE FRONTAGE AND A WASH/CANAL ON THE 4TH SIDE THIS CONFIGURATION SEVERELY CONSTRAINS OPTIONS TO PLACE A NEW GARAGE ON THE PROPERTY. SCOTTSDALE CODE REQUIRES A 40' BUILDING SETBACK FROM EACH STREET FRONTAGE. THE REQUEST IS TO LOCATE THE NEW GARAGE ALONG THE W. SIDE OF THE HOUSE & ELIMINATE THE 81ST DRIVE.

Scottsdale Ordinance Requires: 40' BUILDING SETBACK FROM STREET R/W

Request: 12' S/B. ON W. SIDE 81ST ST.

Amount of Variance: 28'

**ATTACHMENT #1**

### Planning and Development Services Department

7447 E Indian School Road, Suite 105, Scottsdale, AZ 85251 • Phone: 480-312-7000 • Fax: 480-312-7088



# ZONING ORDINANCE VARIANCE

## Application Submittal Requirements

### Justification for Variance

The Board of Adjustment may not authorize a zoning ordinance variance unless ALL of the following criteria are met. Use the space provided to present your evidence that the requested variance complies; you may attach a separate sheet if you need more room.

1. Special circumstances/conditions exist which do not apply to other properties in the district:

1. Our house is sided by three streets and a wash. This situation creates 40 foot setbacks on 3 sides and a wash on the fourth side. I believe we are the only house in the subdivision with these circumstances.

2. Special circumstances were not created by the owner or applicant:

2. We did not create the setbacks nor the wash. These restrictions were set by the city years ago.

3. Authorizing the variance is necessary for the preservation and enjoyment of substantial property rights:

3. We request authorization for a variance of 1 or more setbacks. We live on almost an acre, and cannot add onto a 3000 square foot house due to the setbacks. The houses in this subdivision are continually being remodeled, adding square footage and/or a 3 car garage and guest houses. We, however, are prohibited from expanding our house to the standards set by our neighbors.

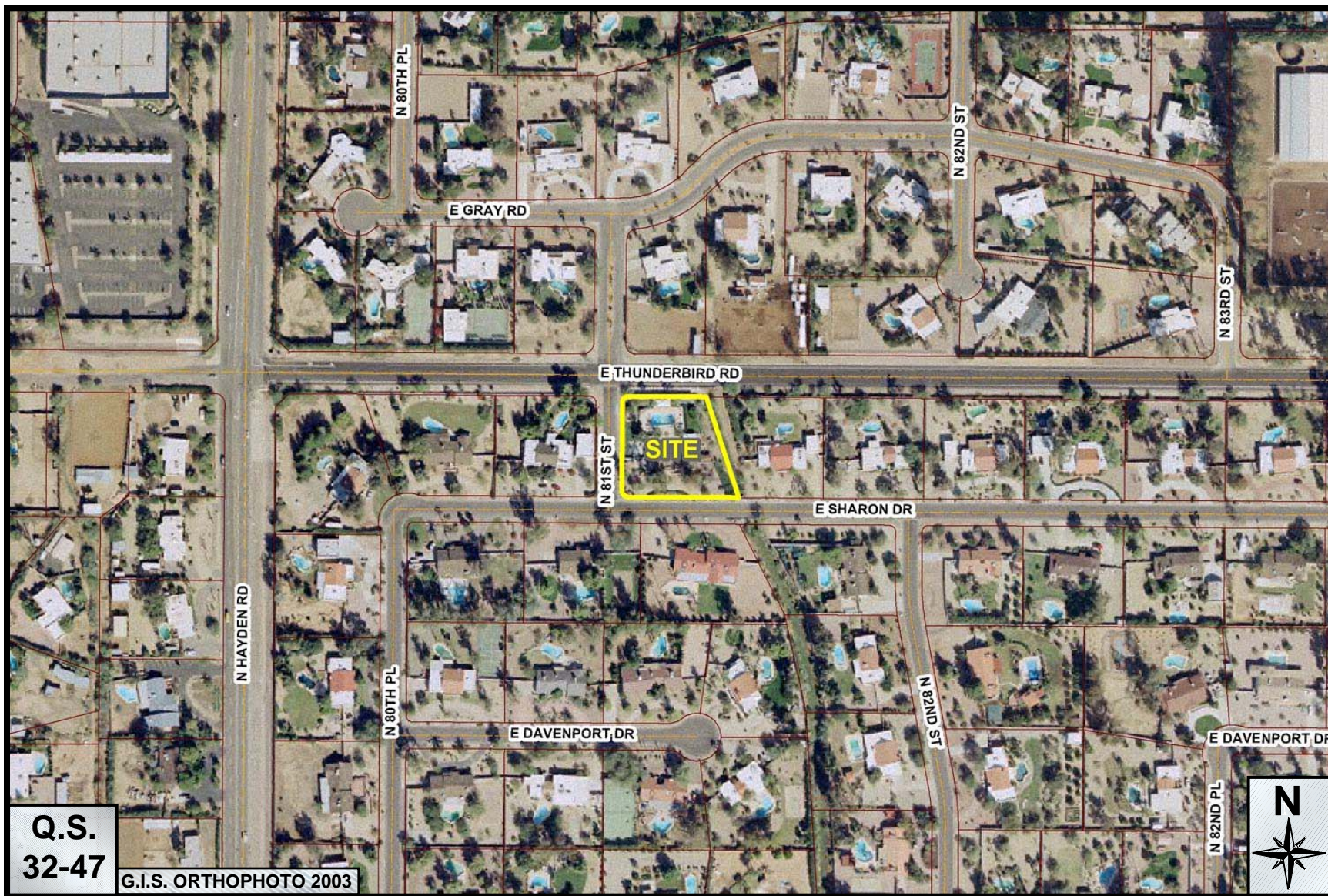
4. Authorizing the application will not be materially detrimental to persons residing or working in the vicinity, to the adjacent property, to the neighborhood, or to the public welfare in general:

4. Authorizing the application will allow our house to be remodeled to the standards set by the neighboring houses. This will enhance the area and keep property values up. There are no persons residing or working in the area that would find our addition detrimental to their property or work.

### Planning and Development Services Department

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Q.S.  
32-47

G.I.S. ORTHOPHOTO 2003

Marshall Delucca Residence

14-BA-2004

ATTACHMENT #3





Q.S.  
32-47

G.I.S. ORTHOPHOTO 2003

Marshall Delucca Residence

14-BA-2004

ATTACHMENT #4



14-BA-2004





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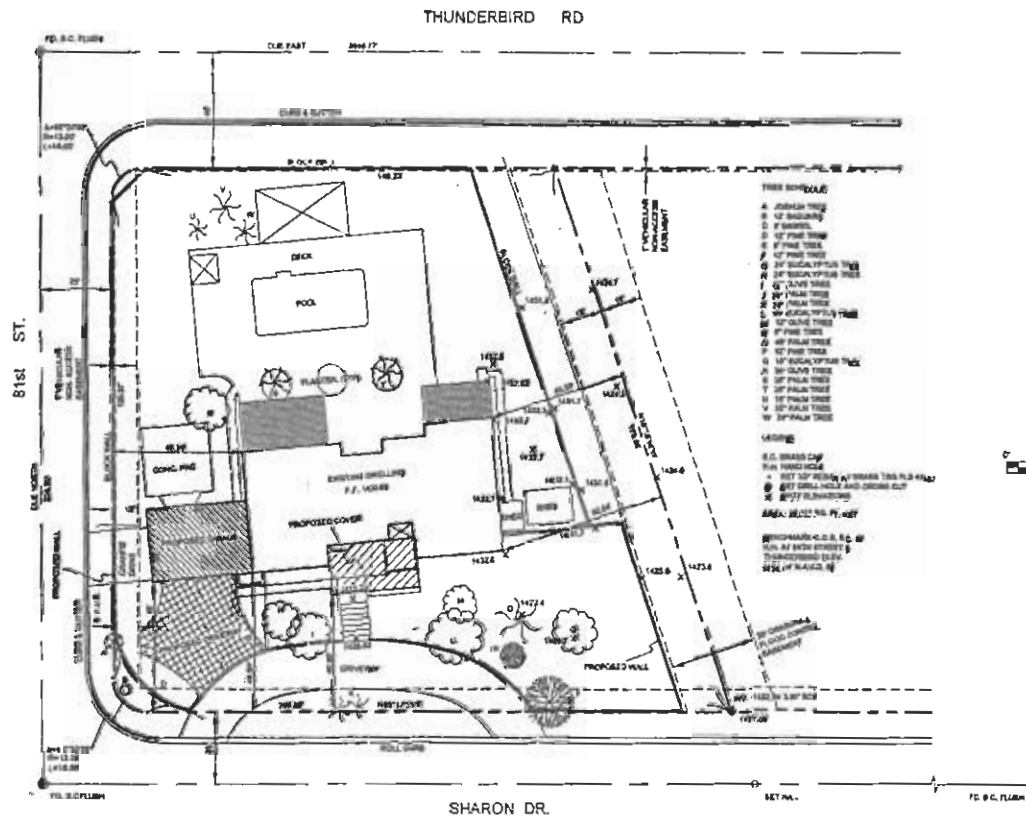
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14

# ARCHITECTURAL SURVEY

OF LOT 10 DESERT WIND IN A PORTION OF THE N 1/2 OF THE NW 1/4 OF SECTION  
13 T3NR4E OF THE G.S.R.B.&M., MARICOPA COUNTY, ARIZONA AS RECORDED  
IN BOOK 199 OF MAPS, PAGE 39 M.C.R.



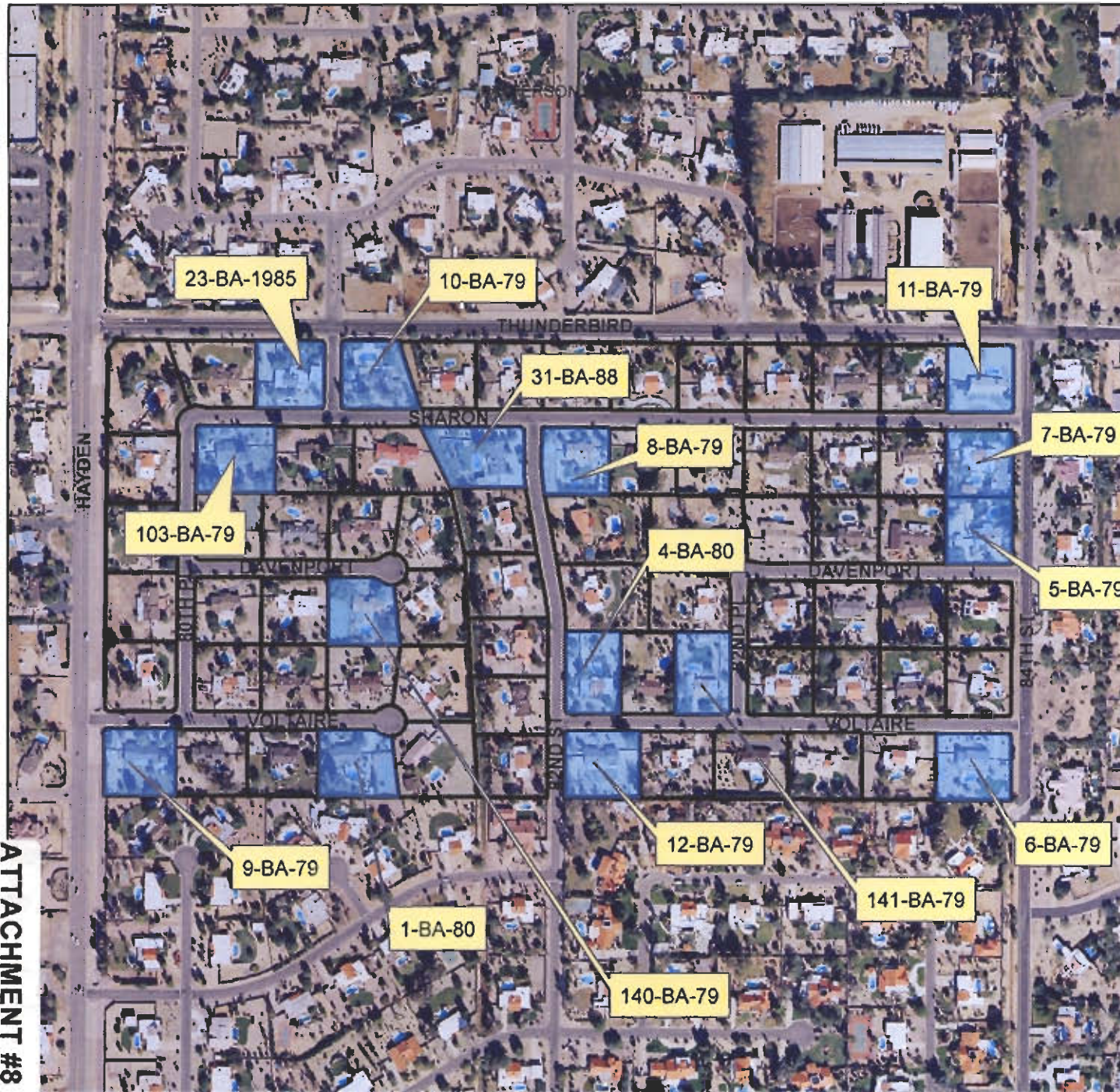
14-BA-2004

PROFESSIONAL LAND SURVEYS OF ARIZONA  
10505 N. 69TH Street, Suite 100A, Scottsdale, AZ 85253  
phone: 480.905.1126 fax: 480.483.0462

JOHN DELUCA  
800 E. VANHOE DRIVE  
SCOTTSDALE, AZ 85260



# Approved Variance Cases Within the Desert Wind Subdivision



## CASE NUMBER / VARIANCE REQUEST

23-BA-85: Accessory building setback.

31-BA-88: Accessory building setback.

140-BA-79: Tennis court fence height

1-BA-80: Tennis court fence height

All other cases: Wall location



*14-BA-2004*

Source: City of Scottsdale Planning and Development Services

Printed: 12-10-2004